

CODE OF THE CITY OF YONKERS, NEW YORK (updated 05-15-2007, Supplement No. 11)
PART IV, BUSINESS REGULATIONS, LICENSES AND CONSUMER PROTECTION
Chapter 33, NEWSRACKS

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[HISTORY: Adopted by the City Council of the City of Yonkers 2-13-1979 as L.L. No. 3-1979. Amendments noted where applicable.]

§ 33-1. Purpose.

The unregulated placement of newsracks in public rights-of-way presents an inconvenience and danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering and leaving vehicles, whether automobiles, taxicabs, private livery or omnibuses, and buildings and persons performing essential utility, traffic control and emergency services. These unregulated newsracks are so located as to cause an inconvenience or danger to persons using public rights-of-way, are unsightly and constitute a public nuisance. The provisions contained in this chapter are in pursuance of and for the purpose of securing and promoting the public health, morals and general welfare of persons in the City of Yonkers in their use of public rights-of-way.

§ 33-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DISTRIBUTOR -- The person responsible for placing and maintaining a newsrack in a public right-of-way.

NEWSRACK -- Any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale of newspapers or other news periodicals and commonly known as "honor boxes." The use of the singular herein shall include the plural.

ROADWAY -- That area between the sidewalk and the curb of any street and, where there is no sidewalk, that area between the property lines adjacent thereto, whether open to vehicular travel or not, but improved, designed or ordinarily used for traffic.

SIDEWALK -- Any street surface provided and intended for the exclusive use of pedestrians. [Amended 5-8-1979 by L.L. No. 11-1979]

STREET -- All that area dedicated to public use for street purposes, and shall include but not be limited to roadways, parkways, alleys, stairs and sidewalks.

§ 33-3. General regulations. [Amended 5-8-1979 by L.L. No. 11-1979]

Any newsrack in a street which, in whole or in part, rests upon, in or over any public sidewalk or roadway shall be bound by the following regulations:

A. No newsrack shall exceed five (5) feet in height, thirty (30) inches in width or two (2) feet in

thickness.

B. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical offered for sale therein.



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- C. Each newsrack shall be equipped with a coin-return mechanism in good working order so as to permit a person inserting a coin to secure an immediate refund in the event that the newspaper or news periodical offered for sale therein is not received by that person for any reason.
- D. Each newsrack shall have affixed to it in a permanent manner a visible, legible notice in substantially the following form:

IN CASE OF A MALFUNCTION OF THIS NEWSRACK OR AN
ACCIDENT INVOLVING IT OR TO SECURE A REFUND, THE
DISTRIBUTOR WHO HAS PLACED AND MAINTAINS IT IS:

Name of distributor
Number, street or P.O. box
Post office, zip code
Telephone number, including area code

- E. Each newsrack shall be maintained in a neat and clean condition and in good repair at all times.
- F. No newsrack shall be placed or allowed to remain in any location so that it interferes with the removal of snow or ice or the removal of leaves or debris, whether the removal is a public or private duty.

§ 33-4. Additional regulations.

Each and every newsrack which, in whole or in part, rests upon, in or over any public sidewalk or roadway shall be further regulated as follows:

- A. No newsrack shall be placed or maintained projecting onto, into or over or resting wholly or partly upon any portion of the roadway of a public street.
- B. No newsrack shall be placed or maintained in such a manner as to endanger the safety of persons or property or interfere with or impede the flow of pedestrian or vehicular traffic, the ingress or egress from any structure or building, whether residential, business or governmental, or the use of public fixtures, including but not limited to utility poles, mailboxes, fire alarms, traffic signals or control signs, hydrants or parking meters. [Amended 5-8-1979 by L.L. No. 11-1979]

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C. No newsrack shall be affixed or attached to any fixture or other property owned or maintained by the City of Yonkers, which property is not suitable for such attachment, including but not limited to aluminum streetlighting poles, traffic signal equipment and poles erected for the placement of traffic regulatory signs. No newsrack shall be affixed or attached to any other fixture upon, in or over any public sidewalk or roadway unless that fixture is owned by the distributor or by a person who has consented to such attachment in a writing filed in the office of the City Engineer of Yonkers. Further, no newsrack shall be affixed or attached to any fixture upon, in or over any public sidewalk or roadway unless the attachment is rigid and secure and prevents the newsrack from swiveling, turning or otherwise moving while so attached and such newsrack, as so attached, does not violate any other provision of this chapter. [Amended 12-11-1979 by L.L. No. 14-1979; 8-25-1981 by L.L. No. 12-1981]

D. No newsrack shall be placed, installed, used or maintained:

- (1) Within three (3) feet of any marked crosswalk.
- (2) Within twelve (12) feet of the curb return of any unmarked crosswalk.
- (3) Within fifteen (15) feet of any fire hydrant.
- (4) Within five (5) feet of any fire or police call box, fire alarm or other emergency communication device, including but not limited to public telephones.
- (5) Within five (5) feet of any driveway, public or private.
- (6) Within fifty (50) feet of any fire or police station.
- (7) Within three (3) feet ahead or fifteen (15) feet to the rear of any designated bus stop, taxi stand or place marked for handicapped parking.
- (8) Within three (3) feet of any bus bench or shelter.
- (9) At any location whereby the clearance space for the passage of pedestrians is reduced to six (6) feet or less.
- (10) Within one hundred (100) feet of any other newsrack on the same side of the street in the same block which contains the same issue or edition of the same newspaper or news periodical. [Amended 12-11-1979 by L.L. No. 14-1979 ^{EN}]

§ 33-5. Penalties for offenses by distributor and patron. [Amended 5-8-1979 by L.L. No. 11-1979]

A. If any distributor violates any provision of this chapter, it shall be the duty of the Corporation Counsel's office to determine that such violation has occurred and thereafter notify the distributor to correct the violation within three (3) days. Such notification and direction shall be in writing, shall specify the nature of the violation and whether it warrants removal of the newsrack if not corrected within three (3) days, shall direct correction and shall be served upon the distributor in the same manner as a summons or shall be telephoned to the distributor at the telephone number designated by the

distributor as provided in § 33-3D hereof and confirmed in a written notice mailed by certified mail, return receipt requested, to the address designated by the distributor as provided in § 33-3D hereof. During such three-day period, the distributor shall have the right to a hearing before the Corporation Counsel or his duly designated representative to determine whether such violation has occurred and whether the nature of such claimed violation warrants removal prior to final determination. At such hearing, the distributor shall have the right to examine the evidence upon which the Corporation Counsel's office acted, to cross-examine any witnesses who may have appeared before it and to offer any evidence which may tend to show that the subject newsrack does not violate any provision of this chapter and that the claimed violation is not of a nature which warrants removal prior to final determination. The hearing officer shall promptly review such evidence, notify the distributor of his decision with respect thereto and afford the distributor a reasonable opportunity to comply with such determination. [Amended 12-11-1979 by L.L. No. 14-1979]

B. If said violation is not corrected within such three-day period or such further reasonable period as is contained in the superseding notice by the Corporation Counsel's office, the Department of Public Works shall be directed by the Corporation Counsel's office to remove such newsrack and place it in storage in a secure place. The cost of the removal and storage shall be billed to the distributor, and in the event of nonpayment, a civil suit for money damages may be brought by the Corporation Counsel's office.

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- C. If such newsrack is not claimed as provided in the Personal Property Law, it shall be treated as abandoned property and disposed of as provided therein.
- D. Any distributor who, having been notified and directed as provided herein to correct a violation of this chapter, fails to correct such violation as provided in such notice shall be guilty of a Class II offense. ^{EN}
- E. Any distributor or other person aggrieved by a finding, determination, notice or action taken under the provisions of this chapter may appeal, and shall be apprised of his right to appeal, to a Board which shall consist of the Mayor, the Commissioner of Public Works and the City Engineer, or their duly designated representatives. An appeal shall be made in writing and must be made within three (3) days after receipt of written notice of any protested decision or action by filing with the office of the Corporation Counsel a letter of appeal briefly stating therein the basis for such appeal. A hearing thereon shall be scheduled to be held on a date no more than ten (10) days after receipt of such letter. The appellant shall be given at least five (5) days' notice of the time and place of the hearing. The Board shall give the appellant, or any other interested person, a reasonable opportunity to be heard in order to show cause why the determination or action appealed from should not be upheld. The burden of proof shall be on the appellant to show that such determination or action was not supported by substantial evidence. The Board shall make a final determination at the conclusion of the hearing or as soon thereafter as is practicable. In the event that a distributor is successful in reversing a determination that the claimed violation was of a nature which warranted removal pending a final determination, no fee shall be imposed for removal and storage of the newsrack which was the subject of the appeal, and failure to comply with such determination shall not serve as a basis for prosecution under § 33-4D hereof.
- F. Nothing contained in this chapter shall be interpreted to limit or impair the exercise by the city of its police power, in the event of an emergency, to remove any newsrack which presents a clear and present danger of imminent personal injury or property damage to users of the public streets of this city.

§ 33-6. Construction of provisions.

This chapter, while regulating newsracks in public rights-of-way, is not to be construed as a sanction of them. The First Amendment of the Constitution of the United States and the Constitution of the State of New York have been interpreted by the courts as prohibiting the banning of newsracks. Therefore, nothing contained in this chapter shall be construed as the city's acquiescence in, liability for or assuming the risks of the placement of newsracks in the city, whether they are in conformity with the provisions of this chapter or not.

Chapter 34, GAMES OF CHANCE

[HISTORY: Adopted by the City Council of the City of Yonkers 3-22-1983 as L.L. No. 5-1983. Amendments noted where applicable.]